



**CITY OF LODI  
COUNCIL COMMUNICATION**

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**AGENDA TITLE:** Approve Waiver of Conflict of Interest for Meyers Nave's Representation of Northern California Power Agency (NCPA)

**MEETING DATE:** March 7, 2012

**PREPARED BY:** City Attorney's Office

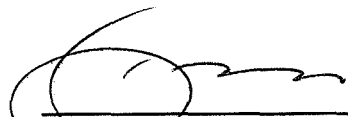
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**RECOMMENDED ACTION:** Approve waiver of conflict of interest for Meyers Nave in their representation of the Northern California Power Agency (NCPA).

**BACKGROUND INFORMATION:** The law firm of Meyers Nave represents the City from time to time with regard to development agreements and other land use matters. They also assisted the City in drafting sections of the development agreements relating to electric utility costs. Meyers Nave also serves as General Counsel to NCPA, and has been tasked with drafting a Member Services Agreement between NCPA and the City of Lodi for the energy efficiency database services. Although technically a conflict of interest, I believe it is reasonable to waive in light of the risks involved and our desire to use Meyers Nave for land use work in the future.

**FISCAL IMPACT:** None.

**FUNDING AVAILABLE:** None Required.

For:   
Stephen Schwabauer  
City Attorney

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**APPROVED:**

  
Konrad Bartlam, City Manager

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CITY ATTORNEY'S OFFICE

February 7, 2012

D. Stephen Schwabauer  
City Attorney of Lodi  
Office of the City Attorney  
P.O. Box 3006  
Lodi, CA 95241-1910

**Re: *Consent to Continued Representation of the City of Lodi and Northern California Power Agency Regarding crmOrbit – Energy Efficiency PSA and CSA (LSR 12.06)***

Dear Steve:

As you are aware, we act as the General Counsel to the Northern California Power Agency (“NCPA”). In that capacity we have been asked by NCPA to provide advice to it regarding energy efficiency database services to be supplied to several of its members. NCPA has been requested by the City of Lodi (“the City”) and other NCPA members to enter into an agreement with them (“the Member Services Agreement”) by which NCPA would agree to contract with crmOrbit, LLC. crmOrbit would provide energy efficiency database services to the City and other NCPA members under the terms of a consultant services agreement with NCPA, and the City and other NCPA members would agree to pay for the costs of those services under the terms of the Member Services Agreement.

As an aside, we note that the format of the Member Services Agreement to be drafted would be used as something of a template for the future “non-core services” to be provided under the terms of a Legislative & Regulatory Program Agreement which is also being drafted.

In advising NCPA regarding drafting of both the crmOrbit consultant services agreement and the Member Services Agreement with the City, there may be matters which create either actual or potential conflicts of interest between the interests of NCPA and those of the City. The interests and objectives of NCPA and the City relating to this matter either are or may become inconsistent with each other.

We currently represent the City in connection with other matters which are unrelated to the above matter. The purpose of this letter is to disclose this relationship and situation to you, and to seek the City’s informed, written consent to our continued representation of NCPA with respect to this matter as well as our continued representation of the City in the land use and CEQA matters for which we have been retained.

As attorneys, we are governed by specific rules relating to our representation of clients when present or potential conflicts of interest exist. Rules 3-310(B), 3-310(C), and 3-310(E) of the California Rules of Professional Conduct provide as follows:

Rule 3-310(B): A member shall not accept or continue representation of a client without providing written disclosure to the client where:

- (1) The member has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or
- (2) The member knows or reasonably should know that:
  - (a) the member previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and
  - (b) the previous relationship would substantially affect the member's representation; or
- (3) The member has or had a legal, business, financial, professional, or personal relationship with another person or entity the member knows or reasonably should know would be affected substantially by resolution of the matter; or
- (4) The member has or had a legal, business, financial, or professional interest in the subject matter of the representation.

Rule 3-310(C): A member shall not, without the informed written consent of each client:

- (1) Accept representation of more than one client in a matter in which the interests of the clients potentially conflict; or
- (2) Accept or continue representation of more than one client in a matter in which the interests of the clients actually conflict; or
- (3) Represent a client in a matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

Rule 3-310(E): A member shall not, without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the client or former client, the member has obtained confidential information material to the employment.

With regard to Rule 3-310(B), neither we nor, to the best of our actual knowledge, any member of our firm has or has had (i) any legal, business, financial, professional, or personal relationship with any party, witness, person, or entity or (ii) any interest in the subject matter

of our representation of NCPA disclosure of which is required by Rule 3-310(B), except for our past and current representation of the City, as described above.

With regard to Rule 3-310(C), our presently proposed representation of NCPA in connection with the matter described above will not result in our representing NCPA and the City in the same matter. However, it will result in our representing NCPA in the matter first described above at the same time as we are representing the City in separate matters. Therefore, and since we have a professional duty of undivided loyalty to each current client, given our current and past representation of the City, we need the informed written consent of both NCPA and the City before we can represent NCPA in the captioned matter.

With reference to Rule 3-310(E), we do not believe that we have obtained any confidential information from the City that would be material to the current matter in which we have been asked to represent NCPA. However, the City may believe we have or may receive such material confidential information due to the nature of our past and current representation of the City. Consequently, before representing NCPA in this current matter, we request the informed written consent of the City.


In connection with our proposed representation of NCPA in the matter described above and for purposes of assisting you in determining whether or not to consent to such representation, we hereby inform you that:

- (a) We do not anticipate any foreseeable adverse effects upon the City by reason of our representation of NCPA.
- (b) We do not anticipate any foreseeable adverse effects upon the City by reason of our past and current representation of the City.

We request that the City consider this written request carefully. You may wish to confer with independent legal counsel regarding this consent, and should feel free to do so. If, after review and consideration of the foregoing, the City consents to our representation of NCPA in the captioned matter, please sign the enclosed copy of this letter and return it to me as soon as possible.

Please do not hesitate to call me if you have any questions or concerns about the foregoing.

Very truly yours,

  
Steven T. Mattas

Cc: Conflicts Dept.

City of Lodi consents to the representation described above.

Dated: \_\_\_\_\_, 2011

City of Lodi

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By:  
Its:

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